

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MATTHEW LEE PHILLIPS,

Plaintiff,

v.

No. 2:22-cv-00357-JCH-SMV

LAS CRUCES SUN NEWS, and
BETHANY FREUDENTHAL,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Plaintiff, who is proceeding *pro se*, alleged that he witnessed four individuals burglarizing his vehicle and that the individuals assaulted Plaintiff. *See* Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 at 7, Doc. 1, filed May 12, 2022 ("Complaint"). The Third Judicial District Attorney's Office later filed charges against Plaintiff based on Plaintiff's interaction with the individuals. *See* Complaint at 7. Plaintiff alleged that Defendants Las Cruces Sun News and Las Cruces Sun News journalist Bethany Freudenthal's report about the charges against Plaintiff slandered Plaintiff and led to the termination of Plaintiff's employment. *See* Complaint at 3, 7-9.

United States Magistrate Judge Stephan M. Vidmar notified Plaintiff that it appears this case should be dismissed for lack of jurisdiction because: (i) There is no properly alleged diversity jurisdiction because the Complaint states that Plaintiff and all Defendants reside in New Mexico; and (ii) There is no properly alleged federal question jurisdiction because the Complaint does not allege that this action aris[es] under the Constitution, laws, or treaties of the United States. *See* Order to Show Cause, Doc. 5, filed May 11, 2022. Judge Vidmar ordered Plaintiff to show cause

why the Court should not dismiss this case for lack of jurisdiction and to file an amended complaint alleging facts that support the Court's jurisdiction over this case.¹

In his Response to the Order to Show Cause Plaintiff states:

I do feel diversity jurisdiction is valid as to the journalist Bethany Freudenthal on Google search displays as a citizen of Hawaii at the time of this event. As well as the Las Cruces Sun News is owned and operated by the Media News Group Gannett whom Office resides outside of New Mexico located at 7350 Jones Branch Drive Mclean, VA 22107-0150.

Response at 1, Doc. 10, filed May 25, 2022.

On June 15, 2022, Judge Vidmar notified Plaintiff that he has not shown there is diversity of citizenship as to Bethany Freudenthal, whom he alleges was a citizen of Hawaii when the events giving rise to this action arose, noting that federal jurisdiction is determined based on the facts as they existed at the time the complaint was filed and that Plaintiff has not alleged that Bethany Freudenthal was a citizen of another State when he filed his Complaint. *See* Second Order to Show Cause at 2-3, Doc. 13, filed June 15, 2022. Judge Vidmar also notified Plaintiff that he has not shown there is diversity of citizenship as to the Las Cruces Sun News, which he alleges is a subsidiary of the Media News Group Gannett which resides in Virginia, noting that the general rule is that a subsidiary corporation has its own principal place of business for purposes of diversity jurisdiction, unless it is merely an alter ego' or agent of the parent corporation. *See* Second Order to Show Cause at 3.

Judge Vidmar ordered Plaintiff to show cause why the Court should not dismiss this case for lack of jurisdiction and to file a second amended complaint if he asserts the Court has

¹ Plaintiff filed an Amended Complaint the day after Judge Vidmar entered his Order to Show Cause. *See* Corrected Amended Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 at 6, Doc. 9, filed May 12, 2022 ("Amended Complaint")

jurisdiction over this case. Plaintiff did not show cause why the Court should not dismiss this case for lack of jurisdiction and did not file a second amended complaint by the July 7, 2022, deadline.

The Court dismisses this case without prejudice because the Amended Complaint did not properly allege jurisdiction, and because Plaintiff did not show cause why the Court should not dismiss this case for lack of jurisdiction and did not file a second amended complaint alleging facts that support jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir.2006) (“[D]ismissals for lack of jurisdiction should be without prejudice because the court, having determined that it lacks jurisdiction over the action, is incapable of reaching a disposition on the merits of the underlying claims.”).

On June 1, 2022, Defendant Las Cruces Sun News filed a motion to dismiss for lack of subject-matter jurisdiction. *See* Doc. 12. Plaintiff did not file a response to Defendant Las Cruces Sun News' motion to dismiss. On June 28, 2022, Plaintiff filed a motion "to dismiss the case without prejudice until proper jurisdiction can be determined." Doc. 14. Defendant Las Cruces Sun News did not file a response opposing Plaintiff's motion to dismiss without prejudice. The Court denies the motions to dismiss filed by Defendant Las Cruces Sun News and Plaintiff as moot because the Court is dismissing this case.

IT IS ORDERED that:

- (i) This case is **DISMISSED without prejudice**.
- (ii) Defendant Las Cruces Sun News' Motion to Dismiss, Doc. 12, filed June 1, 2022, is **DENIED as moot**.
- (ii) Plaintiff's Request to Dismiss Case, Doc. 14, filed June 28, 2022, is **DENIED as moot**.



SENIOR UNITED STATES DISTRICT JUDGE